THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 22335 OF 2005

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Dated: 28-10-2005

Between:

Haigreeva Engineering Company Ltd.

Visakhapatnam –40. …Petitioner

A N D

1. The Municipal Corporation, Visakhapatnam

rep. By its Commissioner, Visakhapatnam

and another ..Respondents

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 22335 OF 2005

O R D E R :

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1. This writ petition has been by Haigreeva Engineering Company Limited,

represented by its Managing Director with a prayer to issue writ or direction more particularly one in the nature of writ of mandamus declaring the action of the respondents in not considering the price bid of the petitioner along with two other tenders i.e. 1) IVRCL Company Ltd., and (2) Construction Consolidated Consortium Ltd., on 14-10-2005 for tender notice No. 16/2005/CE(MCV) SE(P)/EE(PD-III) of the respondents Corporation as illegal, arbitrary, capricious, unjust and unwarranted.

2. The petitioner is an incorporated Company, Hyderabad and it is a company in Class-I Contract Works from the year 2001. The respondents issued tender notice No.16/2005-2006/CE(MCV)/SE(P)EE(PDIII), dated 17-9-2005 for Modernization of Sardar Vallabhai Patel (SVP) Market (Poorna Market) in Visakhapatnam City. Last date for submission of sealed tenders is 6-10-2005 upto 3-00 p.m. and opening of tender is on the same date at 3-30 p.m. Sealed tender consists of technical bid and price bid. The contract value is 570 lakhs and earnest money deposit of 1% comes to Rs.5.70 lakhs. The period of EMD is 165 days as per tender schedule terms and conditions. The Petitioner Company submitted tender by giving bank guarantee for 1% of the total value of the contract. Besides the petitioner, two other contractors namely 1) IVRCL Company Limited and (2) Construction Consolidated Consortium Ltd, also submitted tenders. The respondents have opened technical bid at 3-30 p.m. on 6-10-2005. The technical bid of the petitioner is found to be defective, since the duration of bank guarantee is stated for 150 days only.

3. It is the contention of the petitioner that its engineer namely Srinivas mistakenly took the bank guarantee for 150 days, instead taking it for six months i.e. 180 days. The petitioner company is willing to extent the period of guarantee for remaining 15 days and requested the respondents to open the price bid. Apprehending that the respondents may not consider his request, the petitioner company filed Writ Petition on 13-10-2005 seeking the direction stated supra.

4. The petitioner company also moved WPMP No. 28615 of 2005 seeking interim direction to respondents to consider the price bid of the petitioner company along with two other tenders. Rule nisi came to be issued on 14-10-2005. However, no interim order has been passed in WPMP No.28615 of 2005.

5. When the WPMP No. 28615 of 2005 came up for consideration, both the parties consented for disposal of main writ petition itself. Accordingly, the writ petition is taken up for final hearing and it is being disposed of by this order.

6. Heard Smt. P.Anjana Devi, learned counsel appearing for the petitioner and the learned Standing Counsel appearing for the respondents.

7. Learned counsel for the petitioner submits that the petitioner company instructed its engineer to take bank guarantee for six months i.e. 180 days to fulfill the tender condition. But, the said engineer inadvertently had obtained the bank guarantee for only 150 days and therefore, the petitioner expressed its willingness to extend the period of Bank guarantee and requested the respondents to accept the price bid. She further submits that the refusal of the respondents Corporation in not permitting the petitioner to extent the Bank guarantee is illegal and improper. It is also submitted by her that mistake crept in with regard to period of Bank guarantee is only trivial in nature and therefore, the respondents Corporation ought to have permitted the petitioner company to extend the period of Bank guarantee.

8. Learned Standing Counsel appearing for the respondents submits that the price bid of the other tenders have been opened and nothing survives in the writ petition for adjudication.

9. It is no more in dispute that as per tender conditions, tenderer has to furnish Bank guarantee for 1% of the value of the contract for a period of 165 days. Admittedly, the Bank guarantee furnished by the petitioner is only for 150 days. It goes without saying that the technical bid offered by the petitioner is defective, in which case, there is no obligation on the part of the respondents to open the price bid offered by the petitioner company. In that view of the matter, I find that the writ petition is devoid of merits and the same is liable to be dismissed.

10. Accordingly, the writ petition is dismissed. No order as to costs.

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B.Seshasayana Reddy, J.

28th October, 2005.

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THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

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